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No. 44

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

PUBLIC SERVICE COMMISSION OF UTAH, HAL S. BENNETT, STEWART M. HANSON AND W. R. McENTIRE,

and

MELVA SEAMONS AND ROY HILL, d.b.a. Seamons Truck Line, and JOSEPH J. MILNE TRUCK LINE, INC., a corporation,
Petitioners,

v.

WYCOFF COMPANY, INCORPORATED, a corporation, *Respondent.*

BRIEF ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AMICUS CURIAE.

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November 3, 1952

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 83-86) is reported at 195 F. 2d 252 (C.C.A. 10); the supplemental opinion of the Court of Appeals (R. 114-117) is reported at 195 F. 2d 255 (C.C.A. 10).

PRELIMINARY STATEMENT

The National Association of Railroad and Utilities Commissioners is a voluntary association, the membership of which embraces the members of the Public Utility Regulatory Commissions and Boards of all the 48 States of the United States, the District of Columbia and the Territories of Puerto Rico and Hawaii.

By the Constitution of the Association either the President or the Executive Committee of the Association is empowered to direct the General Solicitor to appear on behalf of the Association (as distinguished from the individual commissions within its membership) in any proceeding pending before any court or commission in which, in the judgment of the President or Committee, appearance on behalf of the Association should be made. This brief is filed on behalf of the Association by direction of both the President and the Executive Committee in the general public interest.

Briefs of this nature over the years have been filed in cases wherein a general principle applicable to regulation by the states is involved. Often such briefs have been directed to the question of state regulatory jurisdiction as opposed to federal regulatory jurisdiction. This brief will be directed to that one issue of jurisdiction in this case.

STATEMENT OF THE CASE

The case is to review a decision of the United States Court of Appeals for the Tenth Circiut reversing a judgment of the United States District Court in Utah denying an injunction against the Utah Public Service Commission and refusing to declare the transportation of motion picture films between points within the State of Utah to be interstate commerce.

We will not burden the court with a detailed statement of the facts with reference to the record pages since the facts are fully stated with record references in the brief

filed by petitioners. For the purposes of this brief the ultimate and controlling facts briefly stated are these:

The Public Service Commission of the State of Utah sought to take jurisdiction over the operations of a motor carrier employed by certain motion picture exhibitors to transport motion picture films between the place of business of a film distributor located in Salt Lake City and the theaters of the exhibitors located in the State of Utah and also between these theaters all within the state. The motor carrier involved sought an injunction in the District Court as above mentioned. The motion picture films involved were made either in New York State, New Jersey State or the State of California and are shipped from these states, rolled in lengths of 1,000 feet, with a number of rolls packed in cardboard cartons, consigned to and delivered to the distributor in Salt Lake City. The distributor after receiving the cartons, breaks the packages and processes the films. The processing consists of splicing two 1,000 foot lengths of film then adding to this 2,000 foot length of film, what is known in the industry as, a head and tail, so that the film can be used in the projection machines of the exhibitors. This 2,000 foot length of film, with the head and tail attached, is then wound on a metal reel and fits in a projection machine. The film thus processed and made ready for exhibition is then placed in a metal container and stored in a vault on the distributor's premises until such time as it is to be transported to the theater of an exhibitor. As pointed out, in the opinion below, each exhibitor does have a contract with the producers of the films whereby they are given the right to exhibit films made by each producer. The contract does not specify what films an exhibitor is to receive. The exhibitor goes to the distributor in Salt Lake City where the films that the distributor has received and processed are shown to the exhibitor at a pre-view. After seeing the films the exhibitor selects those that he desires to exhibit in his theater and by agreement between the distributor and the exhibitor the

films to be exhibited in the theater are selected and dates assigned for the exhibition. In accordance with this agreement the distributor delivers the processed films in the metal containers to a motor-carrier designated by, and paid for his services by the exhibitor and this motor carrier then transports the films from the place of business of the distributor to the theater of the exhibitor, all within the State of Utah.

THE QUESTION PRESENTED

The question presented is whether a motor carrier engaged in transporting motion picture films between points within a single state is properly subject to regulation by the state regulatory commission under the provisions of existing state laws or whether the operation is such as to be regulated exclusively by Federal authority.

SUMMARY OF ARGUMENT

This brief being directed to the one issue of jurisdiction (state versus federal) must necessarily in seeking the answer to this question of jurisdiction deal with the following question of law: Is the transportation involved intrastate commerce or interstate commerce?

Upon the whole record in this case the transportation of motion picture film from the local distributor in Salt Lake City, Utah, to theaters in the State of Utah and between theaters in the State of Utah and then back to the distributor is not interstate commerce. The films produced out of the State are consigned to and shipped to the distributor in Salt Lake City. The distributor then processes the films and makes them ready for use in the projection machines of the exhibitors. The transportation from distributor to exhibitor is arranged by and paid for by the exhibitor after the exhibitor has selected the film he wishes to exhibit at the distributor's preview and the dates for exhibition have been agreed upon between the distributor and the exhibi-

tor. These facts bring the case squarely within the "broken package" doctrine—the point of termination of the interstate commerce principle. Interstate commerce ceased when the distributor received the films. *Higgins* v. *Carr Brothers Company*, 317 U. S. 572; *Atlantic Coast Line Railroad Company* v. *Standard Oil Co.*, 275 U. S. 257.

Such transportation of a purely local nature, contracted for and carried out wholly within the borders of the State of Utah is not interstate commerce within the definition thereof contained in Part II of the Interstate Commerce Act, Sec. 203(10); U. S. Code, Title 49, Sec. 303(10).

ARGUMENT

The opinion below places great emphasis upon the license contract between the exhibitor (theater owner) and the producer of the motion picture films as the controlling factor in determining whether or not the transportation involved is intrastate or interstate commerce. It appears that the Court below fell into error by failing to give consideration to the essential nature of the transportation involved and by failing to give consideration to the "broken package" doctrine and to the purely local nature of the transpotration.

The supplemental opinion below is further evidence that the Court erred in these respects because that opinion is largely a quotation from some of the evidence in the record which shows plainly that the Court was largely looking at the above-mentioned contract and the over-all method by which motion pictures are produced and exhibited throughout the nation, and not at the essential nature of the local transportation involved.

Neither of the opinions below take into consideration these facts—that the transportation of the motion picture films involved, by the Wycoff Company, between the local distributor in Salt Lake City and the exhibitors in the State of Utah, was contracted for and paid for by the local distributors after the films had come to rest at the place of

business of the distributor, and there had been processed and made ready for exhibition and a particular film selected for exhibition, and a time for exhibition had been agreed upon between the exhibitor and the distributor. The license contract between the exhibitor and the producer of the films does not attempt in any way to control these subsequent agreements whereby the local transportation of the films is brought about. The exhibitor determines the method of transportation and pays for the transportation from the time the processed films leave the distributor's premises until the films are returned to the distributor.

The only thing that the out-of-state producers have to do with this transportation is to approve the carriers. It is readily understandable why the producers of the films require that the carrier be approved, because the title to the films remains in the producer. Both the distributor and the exhibitors are in the nature of lessees of the films. Therefore the producer has an interest in the safety and reliability of the local transportation of its property. This interest and requirement does not change the fact that the transportation involved is wholly local in character and is contracted for and carried out after the films have come to rest with the local distributor and after the original packages consigned to the distributor have been broken open and the films have been processed and re-packaged and made ready for exhibition.

These facts bring the case clearly within the "broken package" doctrine as announced by the following decisions of this court—neither of which has been overruled or criticized: *Higgins* v. *Carr Brothers Company*, 317 U. S. 572; *Atlantic Coast Line Railroad Company* v. *Standard Oil Co.*, 275 U. S. 257.

It is true that the licensing contract contemplates that the films after being processed by the distributor will be transported to the exhibitor, but such does not make the contract the controlling factor in determining whether or

not the transportation between the distributor and the exhibitor and between the theaters of exhibitors and then back to the distributor is transportation in interstate commerce. The method of transportation, the carrier, the time when the transportation will take place, and the person who will pay for the transportation are all determined by agreements between the exhibitors and the distributor which agreements are made after the films are received by the distributor as consignee thereof, the original package broken up, the film processed and re-packaged for exhibition. The transportation of the films within the State of Utah under the aforesaid circumstances is a result of such agreements as aforesaid. These agreements that determine the method, etc., of transportation are between local business people and are concerned with local matters only. While previous transportation in interstate commerce from the out-of-state producers to the Salt Lake City distributor made the local transportation possible, nevertheless the interstate journey ceased when the package of films were delivered to the distributor after which the agreements for local transportation were made and the local transportation carried out. This is a common occurrence in the field of commerce where goods are manufactured in one state, shipped to dealers in another state and through these dealers eventually are sold to the consuming public. After the local dealer once receives the goods, breaks up the packages and distributes to consumers the transactions therein concerned become intrastate commerce, even though it was contemplated at the time the goods were shipped by the manufacturer that they would eventually arrive in the hands of consumers by some means of local transportation.

The error of the opinion below lies in the fact that it fails to distinguish between the local transportation in Utah, which is herein involved, and the over-all transactions by which motion picture films are produced and exhibited through the United States. When the facts concerning the

local transpotration involved in this case are looked at separate and apart from the over-all methods employed in the production, distribution and exhibition of motion picture films then the local nature of the transportation in Utah and the fact that it has become intrastate commerce can be more readily understood. The local transportation involved here is merely incidental to the interstate journey of the picture films from the producers to the local distributor. *United States* v. *Yellow Cab Company, et al.*, 332 U. S. 218.

We respectfully urge that the decision below should be reversed.

Respectfully submitted,

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